

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

ERIK ESTRADA HAYNES,

Plaintiff,

V.

**BRIAN OWENS and SHEVONDAH
FIELDS,**

Defendants.

CIVIL ACTION NO. 5:13-CV-339 (MTT)

ORDER

Before the Court is the Recommendation of Magistrate Judge Stephen Hyles (Doc. 19) on the Defendants' motion to dismiss the Plaintiff's complaint (Doc. 12) and motion to dismiss the Plaintiff's order to show cause (Doc. 13). The Magistrate Judge recommends dismissing the complaint because the Eleventh Amendment bars the Plaintiff's claims against the Defendants in their official capacities, and the complaint fails to state a claim on which relief can be granted. He recommends dismissing the Plaintiff's motion, construed as a motion for a preliminary injunction or temporary restraining order, because the Plaintiff has not shown a substantial likelihood of success on the merits. Rather than object to the Recommendation, the Plaintiff has now moved to dismiss his complaint. (Doc. 20).

Though Fed. R. Civ. P. 41(a)(1)(A) ordinarily permits a plaintiff to dismiss his complaint before an answer or a motion for summary judgment has been served, the Prison Litigation Reform Act (“PLRA”) prevents dismissal in this case. See *Stone v. Smith*, 2009 WL 368620, at * 1 (S.D. Ga.). Otherwise, the Plaintiff would be able to

circumvent the PLRA's three strikes provision once it has been recommended that his case be dismissed. The Recommendation makes clear that dismissal in this case is a strike against the Plaintiff pursuant to 28 U.S.C. § 1915(g).

The Court has reviewed the Recommendation, and the Court accepts and adopts the findings, conclusions, and recommendations of the Magistrate Judge. The Recommendation is **ADOPTED** and made the order the Court. Accordingly, the Defendants' motions to dismiss the complaint and to dismiss the Plaintiff's order to show cause (Docs. 12; 13) are **GRANTED**. The Plaintiff's motion to dismiss (Doc. 20) is **DENIED**.

SO ORDERED, this 25th day of March, 2014.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT